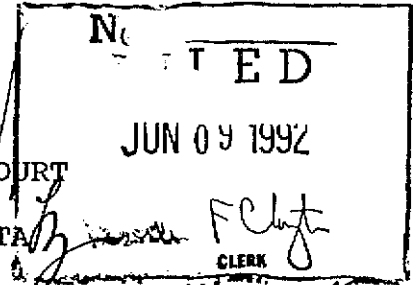


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION



EUGENE J. LODERMEIER and
MERYLE E. LODERMEIER, et al.,

CIV 91-4148

Plaintiffs,

-vs-

MEMORANDUM OPINION and
ORDER

SIOUX FALLS POLICE DEPARTMENT,
CITY OF SIOUX FALLS, STATE OF
SOUTH DAKOTA, ROGER
TELLINGHUISEN, MARK BARNETT,
DIANE BEST, COUNTY OF
MINNEHAHA, RICHARD HURD,
DAVID NELSON, JAMES IOSTY,
LANCE MATTSON, RICHARD
SEIVERT, RUSSELL PRINCE,
GERALD FOLKERTS, CARL
EDMUNDS, TERRY SATTERLEE,
RANDALL FLOOD, DEAN JOHNSON,
KELO-TV, KDLT-TV, KSFY-TV,
SIOUX FALLS ARGUS LEADER,
JANET LIVELY, STEVE
ERPENBACH, TODD NELSON,
VALERIE ARMSTRONG, et al.,
in their individual and
official capacities,

Defendants.

It appears from the record herein that plaintiff Meryle E. Lodermeier was charged with the offense of Making False Report to Law Officers in violation of SDCL 22-11-9(2) and was convicted thereon on December 12, 1989. (Doc. 35)

Plaintiffs are the parents of Gene V. Lodermeier who was convicted of criminal offenses, and who brought a § 1983

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1 action relating to this conviction. CIV 91-4147. Plaintiffs
2 also bring this action under § 1983 and many of their
3 allegations closely parallel the claims made by their son in
4 his action.

5 OTHER PLAINTIFFS

6 The caption of this action states: "Eugene J. Lodermeier
7 and Meryle E. Lodermeier, et al." Plaintiffs are acting pro
8 se and cannot represent other plaintiffs. That part of the
9 caption stating "et al." will be stricken.

10 NEWS MEDIA DEFENDANTS

11 The plaintiffs in paragraph 36 of the Complaint charge
12 various news media defendants named therein with defamation.

13 Defendant KELO-TV filed and served a Motion to Dismiss
14 for Failure to State a Claim (Doc. 7) on January 27, 1992.

15 Defendant KDLT-TV filed and served a Rule 12 Motion to
16 Dismiss (Doc. 13) on February 6, 1992.

17 Defendant KSFY-TV filed a Motion to Dismiss and for
18 sanctions (Doc. 5) on January 3, 1992.

19 Defendants Sioux Falls Argus Leader, Janet Lively, Steve
20 Erpenbach, Todd Nelson and Valerie Armstrong filed a Motion to
21 Dismiss for Failure to State a Claim Upon Which Relief Can Be
22 Granted (Doc. 21) on February 25, 1992.

23 The plaintiff has not responded to any of these motions.

24 I conclude that the motions should be granted on the
25 basis that the complaint fails to state a cause of action
26

1 against these defendants, and will *sua sponte* dismiss the
2 complaint against the other defendants named in paragraph 36
3 for the reasons stated herein.

4 To establish an action under 42 U.S.C. § 1983, two
5 elements must be present: (1) the conduct complained of must
6 have deprived the plaintiff of rights, privileges, or
7 immunities secured by the Constitution or laws of the United
8 States, and (2) the conduct must have been committed by a
9 person acting under color of state law. 42 U.S.C. § 1983
10 (1981); *see also Jones v. Gutschenritter*, 909 F.2d 1208, 1211 (8th Cir.
11 1990).

12 Neither element has been met by plaintiffs' claims
13 against these defendants. As to the first element, defamation
14 claims are not cognizable in § 1983 actions because "[o]ne's
15 reputation alone is neither a 'liberty' nor a 'property'
16 interest protectible by the due process clause of the
17 fourteenth amendment." *Wade v. Goodwin*, 843 F.2d 1150 (8th Cir.
18 1988).

19 As to the second element, plaintiff has not alleged that
20 these defendants were acting under color of state law, nor
21 could he do so. *See West v. Atkins*, 487 U.S. 42, 49 (1988) ("The
22 traditional definition of acting under color of state law
23 requires that the defendant in a § 1983 action have exercised
24 power 'possessed by virtue of state law and made possible only
25
26

1 because the wrongdoer is clothed with the authority of state
2 law."'). Thus, plaintiffs fail to state a claim under § 1983
3 against any of the media defendants, and the complaint must be
4 dismissed as to them.

5 HABEAS CORPUS CLAIMS

6 Complaint, Section VI, Prayer for Relief, B. asks that
7 the judgment of conviction against plaintiff Meryle Lodermeier
8 be declared invalid.

9 This claim must be dismissed without prejudice. It is
10 clear on the record in this case that no habeas corpus claims
11 have been exhausted in state court. *Rose v. Lundy*, 455 U.S.
12 509, 71 L.Ed.2d 379, 102 S.Ct. 1198 (1982).

13 OTHER DEFENDANTS

14 The motions to dismiss of the other defendants are in
15 part based on matters outside of the pleadings, so they should
16 be treated as motions for summary judgment under Rule 35 of
17 the Federal Rules of Civil Procedure. Plaintiffs should file
18 and serve any answering materials and briefs on or before July
19 1, 1992. The moving parties may have until July 15, 1992 to
20 file reply briefs, and the Court will thereupon decide all
21 pending motions on the record so made.

22 Defendants KSFY-TV and KDLT-TV have requested Rule 11
23 sanctions against the plaintiffs. Plaintiffs shall have until
24 July 1, 1992 to respond to the request for sanctions, and the
25

1 Court will thereupon decide the Rule 11 motions on the record.

2 Upon the record herein,

3 IT IS ORDERED:

4 (1) That the words, "et al." are stricken from the
5 caption.

6 (2) That the motions to dismiss made by defendants KELO-
7 TV, KDLT-TV, KSFY-TV, Sioux Falls Argus Leader, Janet Lively,
8 Steve Erpenbach, Todd Nelson, and Valerie Armstrong, are
9 granted, and the complaint is dismissed with prejudice as to
10 each of them.

11 (3) That Meryle E. Lodermeier's claim for habeas corpus
12 relief, Prayer for Relief, VI, paragraph B, is dismissed
13 without prejudice.

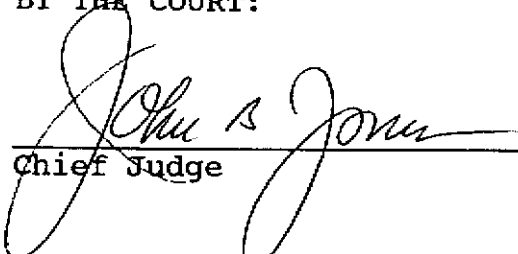
14 (4) That all motions to dismiss will be treated as
15 motions for summary judgment to the extent that they assert
16 matters outside the complaint, and plaintiffs shall file and
17 serve answering materials and briefs thereto on or before July
18 1, 1992; and on the same date, plaintiffs shall respond to
19 the requests for Rule 11 sanctions made by defendants KDLT-TV
20 and KSFY-TV.

21 (5) That the moving parties may file and serve reply
22 briefs on or before July 15, 1992.

23 (6) That the Court will thereupon decide all motions on
24 the record so made.

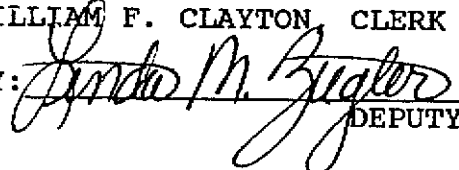
1 Dated this 9th day of June, 1992.

2 BY THE COURT:

3 
4 Chief Judge

5 ATTEST:

6 WILLIAM F. CLAYTON, CLERK

7 BY: 
8 DEPUTY

9 (SEAL)